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Washington, DC 20004-1206

November 21, 2003

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BY HAND DELIVERY

Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

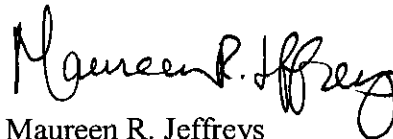
Re: Petition for Rulemaking to Amend the FM Table of Allotments
to Reserve Channel 238A in Westley, California

Dear Ms. Dortch:

On behalf of KQED, Inc., I respectfully submit an original and four (4) copies of a Petition for Rulemaking to amend the FM Table of Allotments to designate Channel 238A in Westley, California as a reserved noncommercial educational channel.

If there are any questions concerning this matter, please contact me.

Sincerely,



Maureen R. Jeffreys
Counsel for KQED, Inc.

Enclosures

cc: Ms. Rolanda F. Smith (by hand)
Theodore D. Frank, Esq.
Margaret Berry, Esq.

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NOV 21 2003

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
KQED, Inc.)
)
Petition for Rulemaking To Amend)
the FM Table of Allotments,)
Section 73.202(b) of the Commission's)
Rules)

RM No. _____

PETITION FOR RULEMAKING

Pursuant to Section 1.401 of the Commission's rules, KQED, Inc. ("KQED") hereby files a petition for rulemaking to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules. Specifically, KQED seeks to reserve for noncommercial use the vacant FM allotment for Westley, California on Channel 238A.

On September 30, 2003, the Media Bureau opened a filing window through November 21, 2003, to permit parties to file petitions for rulemaking to reserve for noncommercial use any vacant FM allotment except those for which a Notice of Proposed Rulemaking was released on or after August 7, 2000.¹ The Media Bureau specified that petitioners must follow the reservation methodology set forth in *In re Reexamination of the Comparative Standards for Noncommercial Educational*

¹ See *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings For Certain Vacant FM Allotments*, Public Notice, DA 03-2990 (Sept. 30, 2003).

Applications, Second Report and Order, 18 FCC Rcd. 6691, ¶¶ 34-40 (2003) (“*NCE Second Report and Order*”).

Under this methodology, a party seeking to reserve an allotment for noncommercial purposes must satisfy two distinct criteria. First, the petitioner must show the relative need for a new noncommercial educational service. This showing can be made by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second noncommercial educational service to at least ten percent of the population within the proposed station’s service area and that such population is at least 2000 persons. Second, the petitioner must make a technical preclusion showing, *i.e.*, that it is technically precluded from providing service to the proposed community on a reserved channel.²

As demonstrated in the attached statement of KQED’s engineering consultants, Hammett & Edison, Inc., KQED satisfies both criteria. First, KQED has demonstrated the relative need for a new noncommercial educational FM station in Westley, California. Operating with maximum class facilities, Channel 238A would provide coverage to 516,717 persons, including 17,874 persons who do not have any noncommercial educational FM service and 71,632 persons who have only one such service. Thus, over 17% of the total population of the coverage area would receive its first or second local FM noncommercial educational service from the proposed facilities – far in excess of the 10% and 2,000 persons threshold established by the Commission for demonstrating the first criteria of the reservation showing.

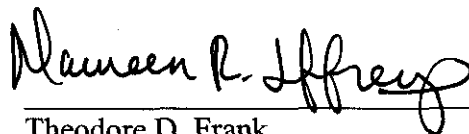
² The *NCE Second Report and Order* sets forth two specific engineering formulas to satisfy the technical preclusion showing. *See id.* ¶ 35.

Second, KQED has demonstrated that it is technically precluded from providing a new service to Westley, California on a reserved channel. As fully illustrated on the attached engineering exhibit and accompanying Figures 2-21, Hammett & Edison applied the engineering formulas for technical preclusion set forth in the *NCE Second Report and Order* and concluded that all reserved channels (Channels 201-220) are technically precluded from providing service to Westley, California.

CONCLUSION

Accordingly, KQED requests that the Commission grant its petition and amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to designate Channel 238A as a reserved noncommercial educational channel. KQED intends to file an application for the facilities once they are re-allocated for noncommercial educational use.

Respectfully submitted,



Theodore D. Frank
Maureen R. Jeffreys
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206
(202) 942-5000

Counsel for KQED, Inc.

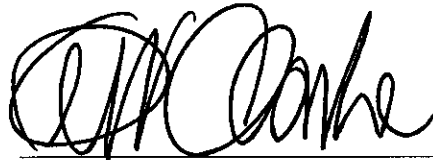
Dated: November 21, 2003

DECLARATION OF JEFF CLARKE

I, Jeff Clarke, am President and Chief Executive Officer of KQED, Inc., petitioner seeking to reserve Channel 238A in Westley, California for noncommercial purposes. KQED, Inc. intends to file an application for the facilities if the FCC grants KQED's petition to reserve Channel 238A.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on November 20, 2003.

A handwritten signature in black ink, appearing to read 'Jeff Clarke', is written over a horizontal line.

Jeff Clarke

Vacant FM Allotment • Channel 238A • Westley, California

Statement of Hammett & Edison, Inc., Consulting Engineers

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained by KQED, Inc., to prepare engineering materials in support of a request to reserve the vacant FM allotment for Westley, California, on Channel 238A for noncommercial use.

Background

The FCC has initiated an allocation proceeding to allow for the reservation of certain vacant commercial FM allotments for noncommercial educational use. The reservation methodology is set forth in the FCC NCE Second Report and Order MM Docket No. 95-31 and reservation requests must satisfy two distinct criteria: demonstration of preclusion from using a reserved NCE channel, and provision of first or second local aural NCE service to at least 10% of the population within the 1.0 mV/m contour.

Reservation Methodology

The FCC has recommended the following test as a reliable and efficient proxy for technical exclusion: The showing is based upon a circle, centered in the proposed community of license and drawn with a radius one kilometer less than the distance to the predicted 60 dBu strength signal of a maximum same-class facility. The reservation showing must establish that no rule-compliant facility can be authorized at maximum antenna height above average terrain ("HAAT") and with maximum effective radiated power ("ERP) on any reserved band channel at four equally-spaced locations on the circle, beginning with 0 (zero) degrees. In addition, the reservation showing must establish that no same-class rule-compliant facility can be authorized at minimum antenna HAAT and with minimum ERP on any reserved band channel at the city center coordinates for the community of license.

Finally, it must be demonstrated that the maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least 10% of the population within the proposed station's service area and that such population is at least 2000 persons.

First and Second Local NCE Aural Service

The attached Figure showing shows the class maximum 60 dBu coverage contour for the Channel 238A allotment for Westley, California, from a class maximum facility operating at 6.0 kW with a height above average terrain of 100 meters from the coordinates of record. Population coverage is as follows:

<u>Ch 238A, Westley</u>	<u>Population Coverage (2000 Census)</u>
Total Coverage	516,717 persons
1st NCE Service	17,874
2nd NCE Service	71,632



Vacant FM Allotment • Channel 238A • Westley, California

The class maximum facility provides coverage to 515,717 persons, 17.3% of whom will receive first or second local aural NCE service. Therefore, the facility meets the FCC criteria for demonstration of the relative need for a new NCE service.

Preclusion Study

In order to demonstrate that Channels 201–220 are precluded from serving Westley, California, the 60 dBu contours were projected from the four maximum power facilities and one minimum power facility recommend in the FCC preclusion methodology. Interfering contours for co- and first-adjacent channels, F(50,10) 40 dBu and 54 dBu, respectively, were then projected for each channel studied. As shown in the attached Figures 2–21, no rule-compliant facility on any channel for any of the five facilities noted can be authorized. In fact, for each channel from 201 through 220, an interfering 54 or 60 dBu contour from a co-channel or first-adjacent station completely encompasses the population and area of Westley, California. This prevents any reserved band channel from covering 50 percent of the City of License population with its 60 dBu contour as required by FCC Rule 73.515.

Conclusion

The vacant FM allotment for Channel 238A, Westley, California, meets both of the reservation criteria set forth in the NCE Second Report and Order: A class maximum facility from the coordinates of record for the allotment covers more than 2,000 persons, and over 10% (17.3%) will receive first or second local aural NCE service from this facility, and all reserved channels (Channels 201–220) are technically precluded from providing service to Westley, California.

List of Figures

In carrying out these engineering studies, the following attached figures were prepared under my direct supervision:

1. Areas Receiving First or Second Local NCE Aural Service
- 2–21. Preclusion Showing For Channels 2 through Channel 21

November 19, 2003



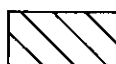
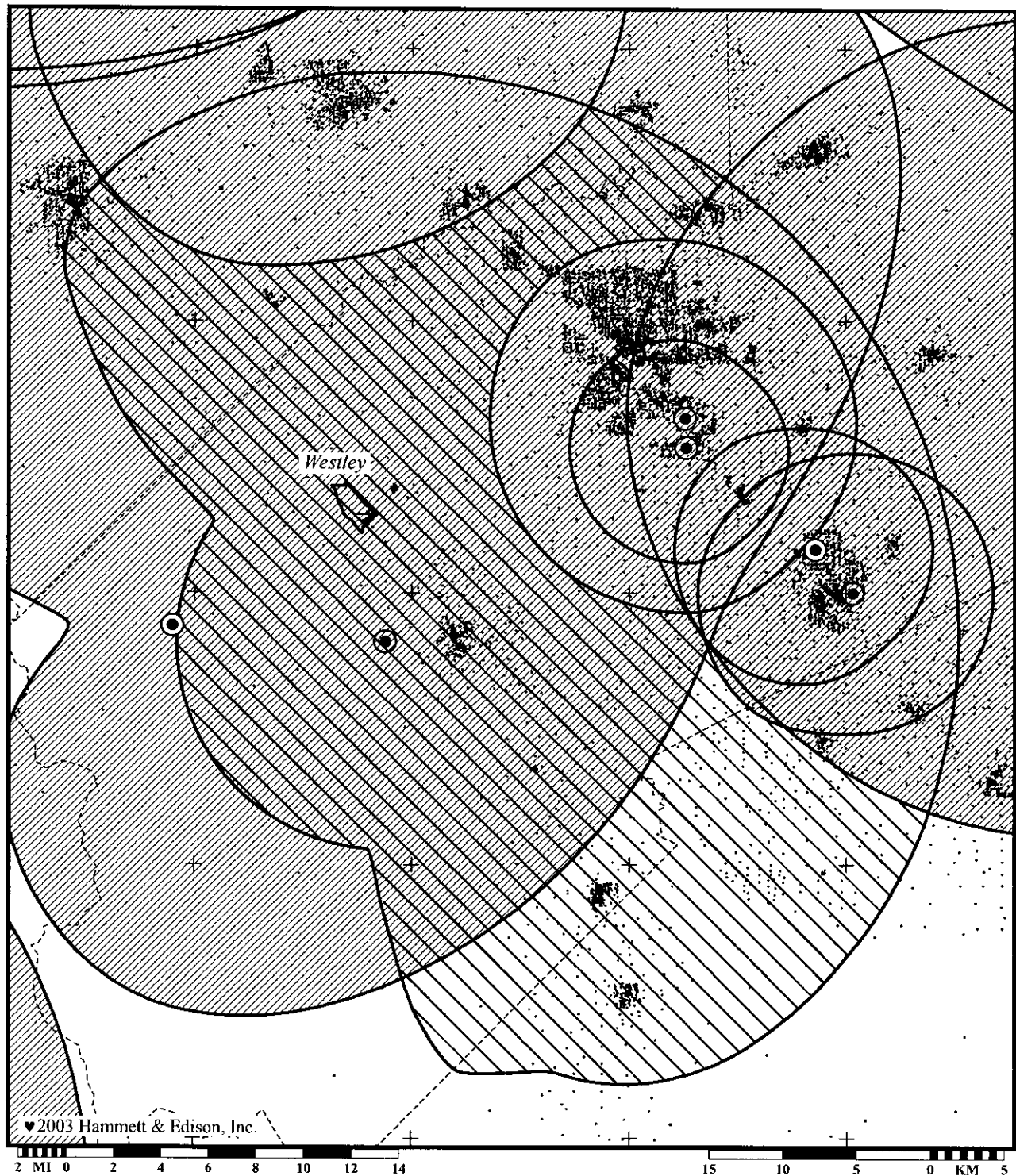

Mark D. Neumann, P.E.



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Vacant FM Allotment • Channel 238A • Westley, California

Areas Receiving First and Second Local Aural Service



Area receiving 1st Local NCE Aural Service



Area receiving 2nd Local NCE Aural Service

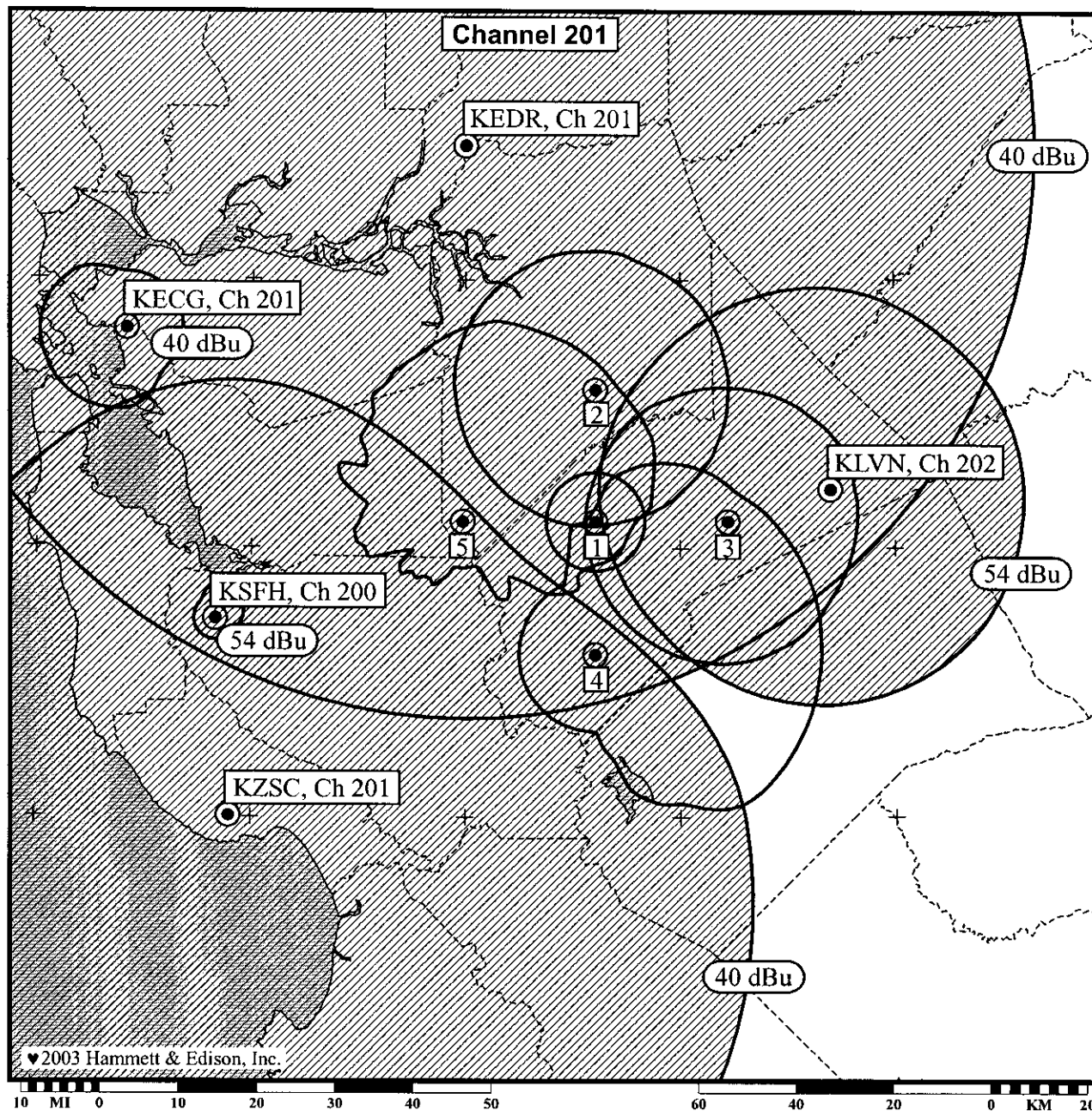


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Figure 1

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

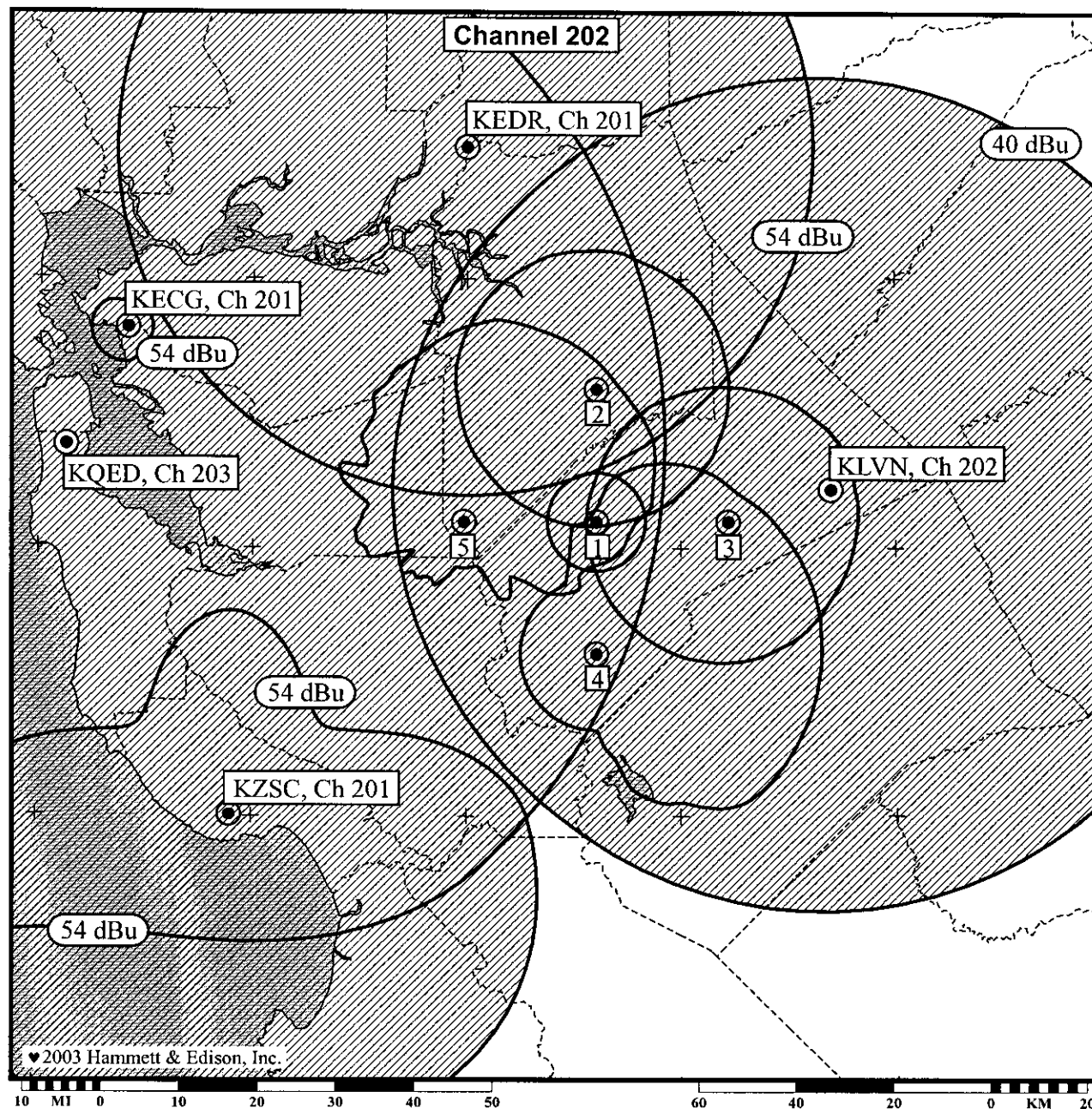


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Figure 2

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

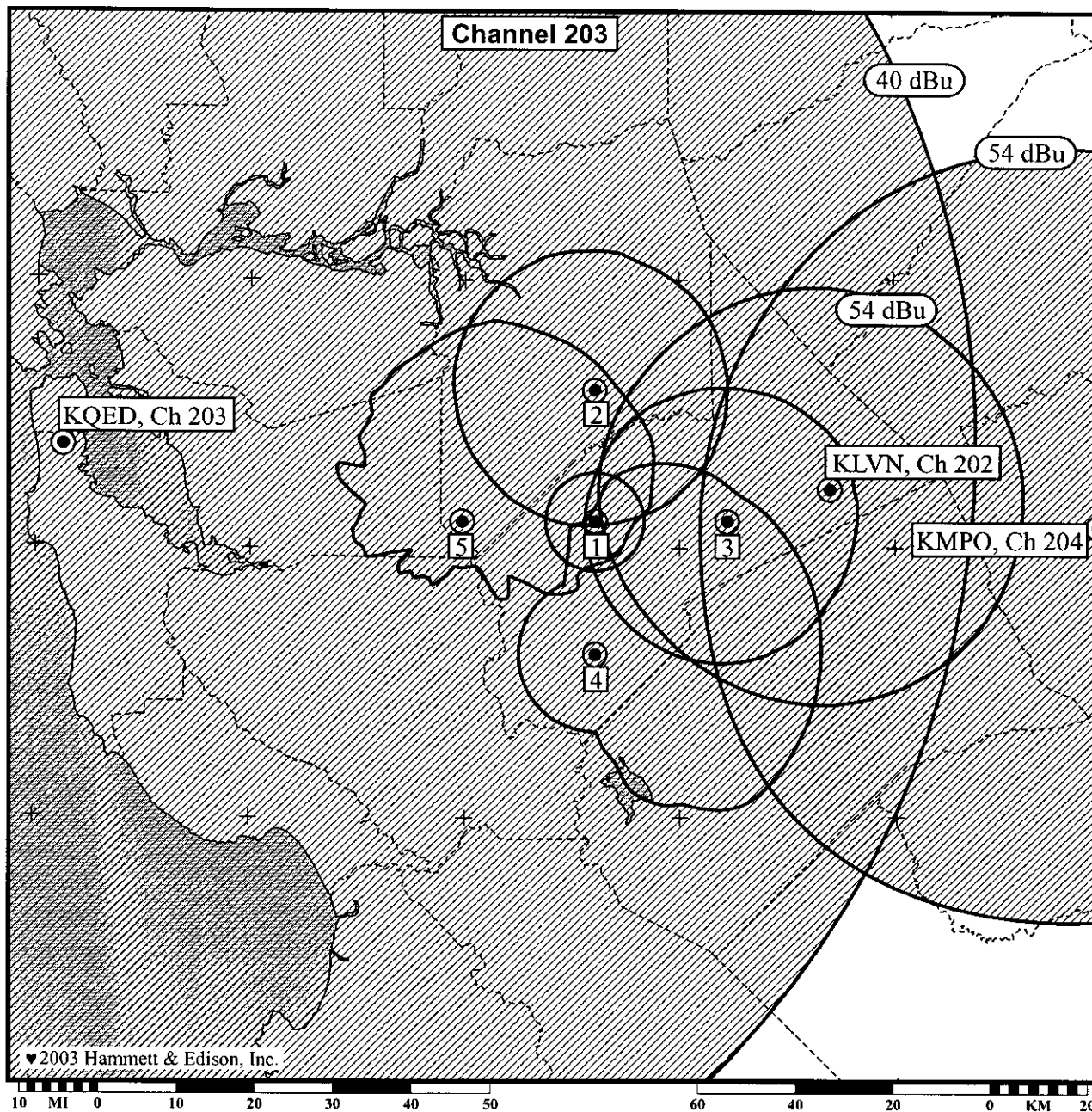


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Figure 3

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

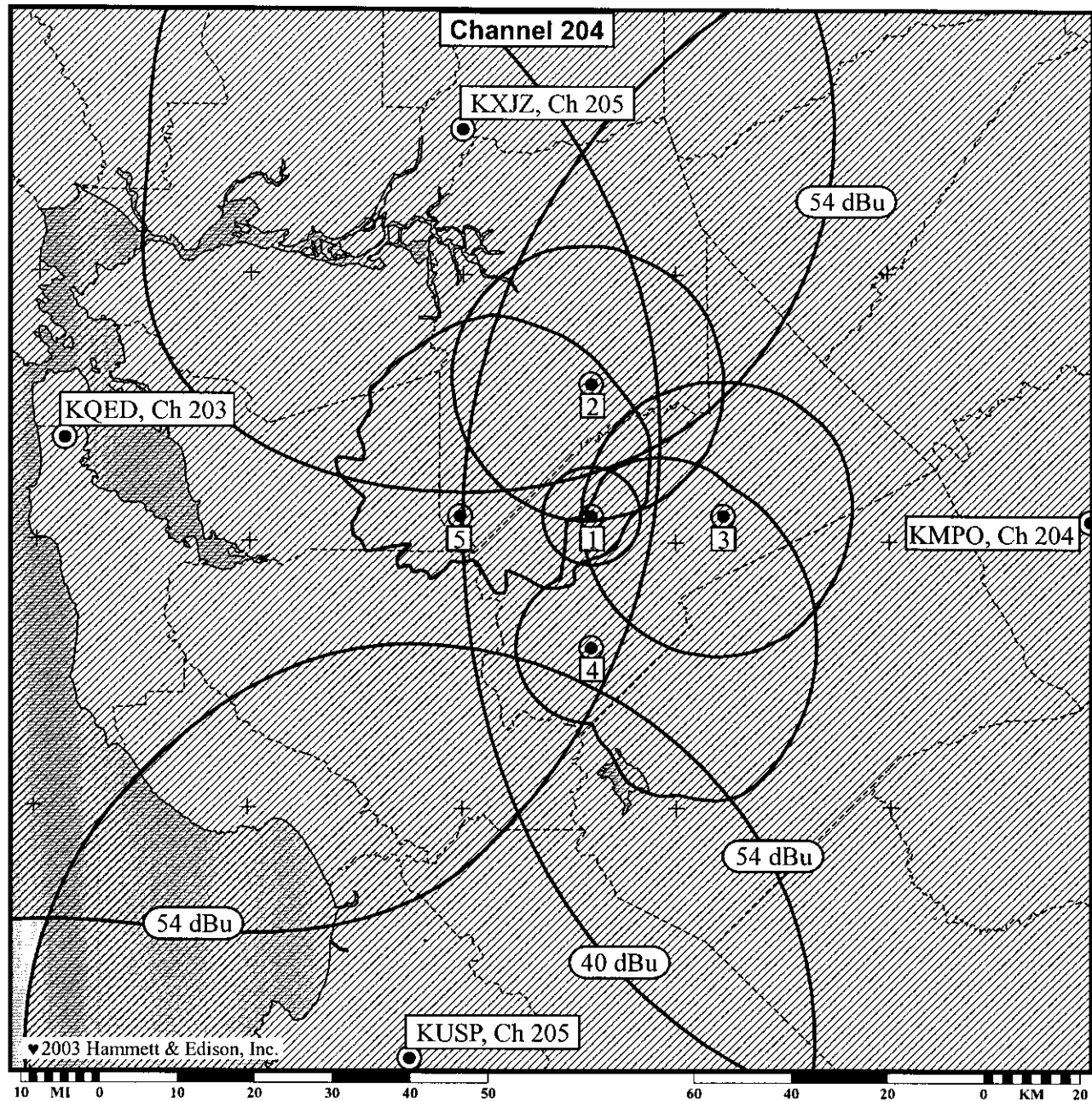


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Figure 4

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

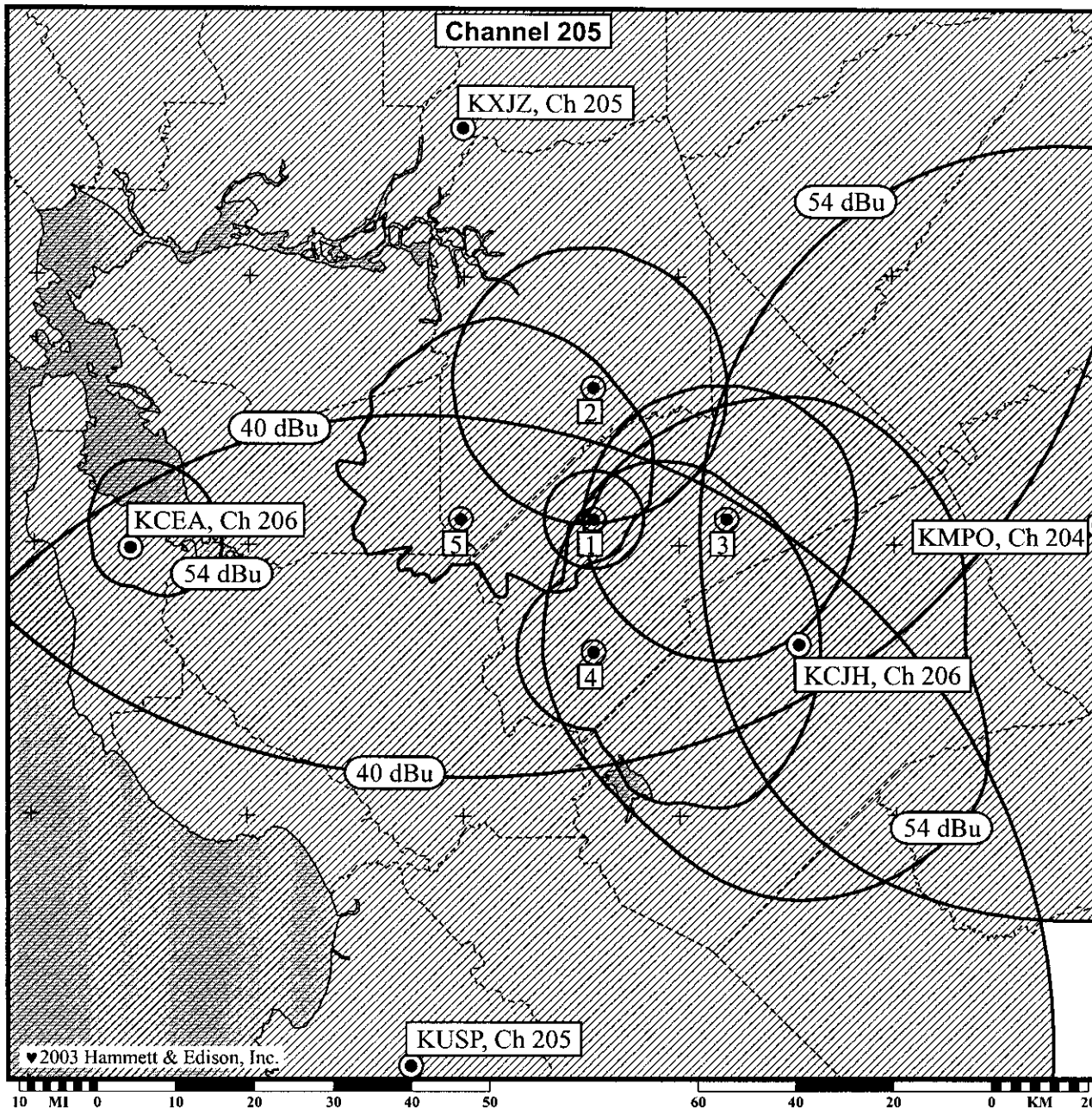


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Figure 5

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

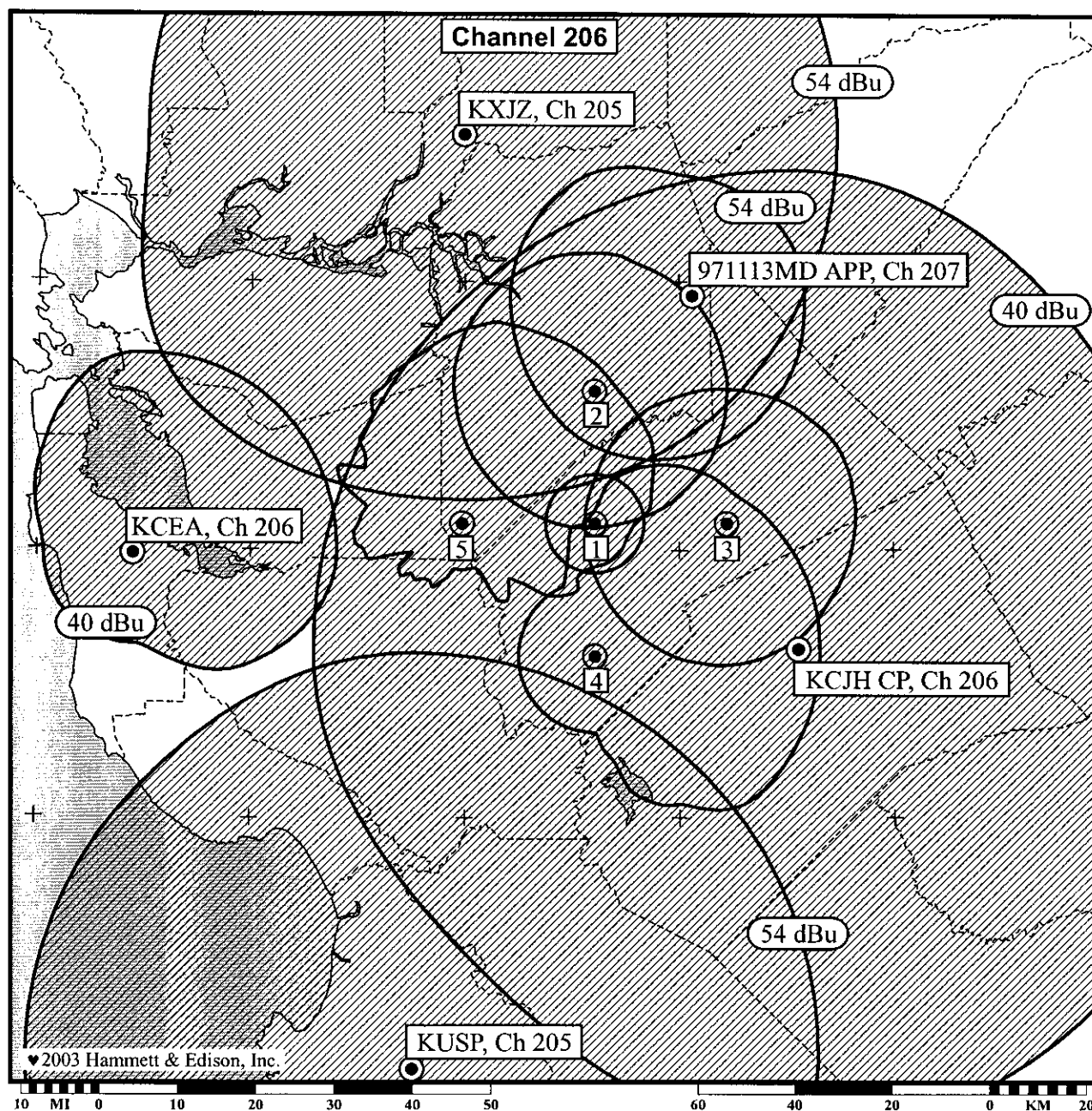


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Figure 6

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

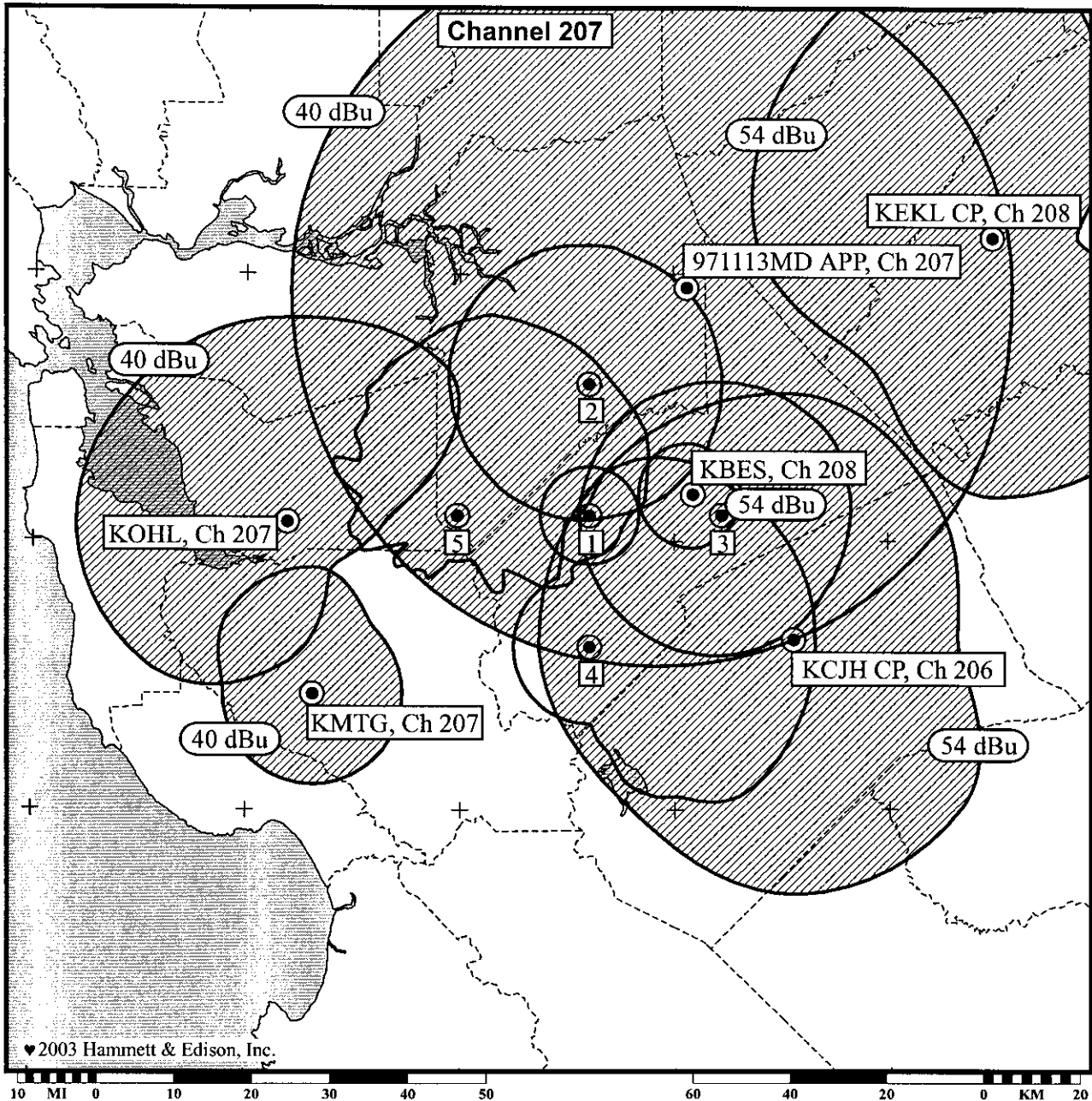


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Figure 7

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

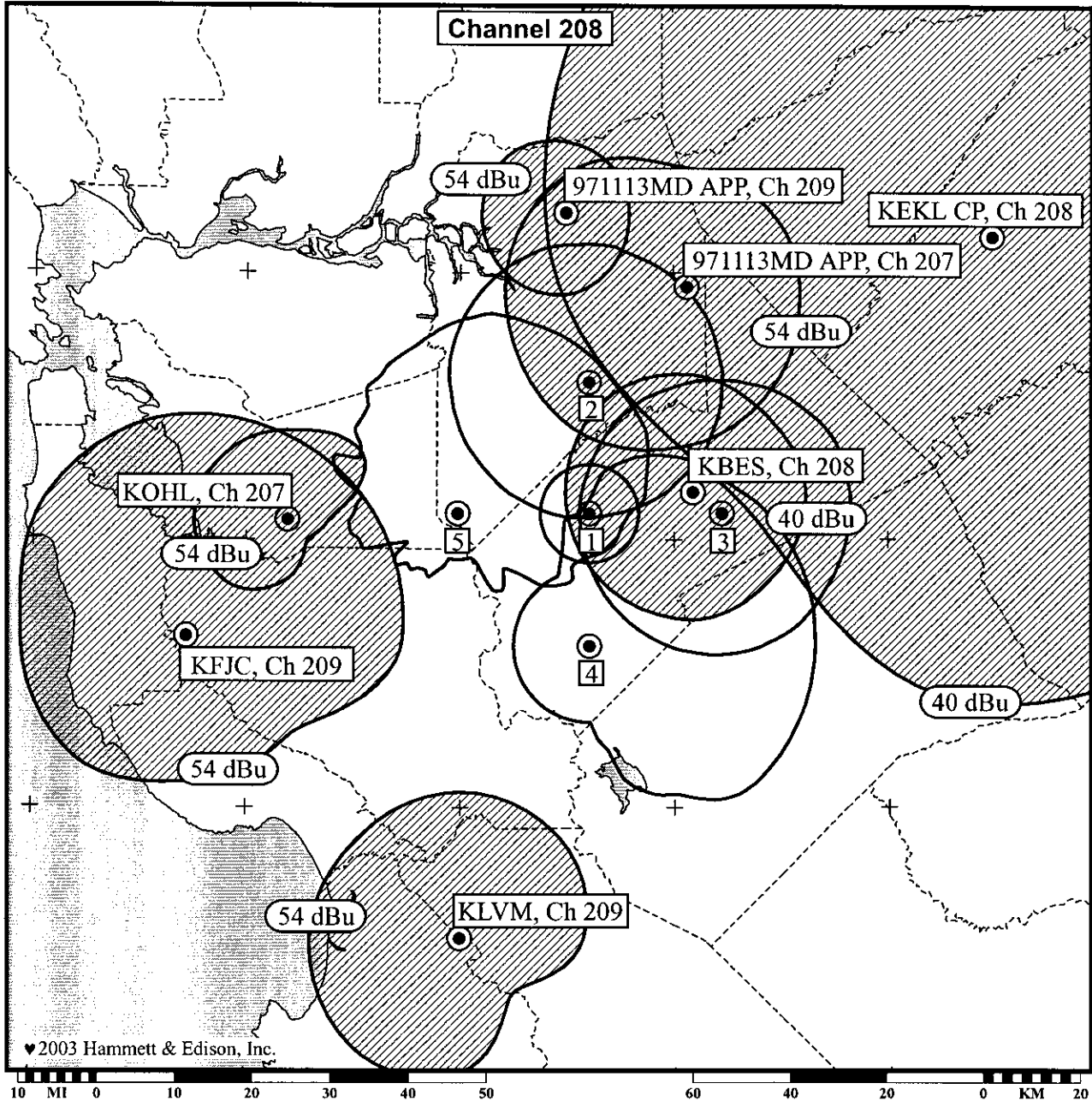


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Figure 8

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

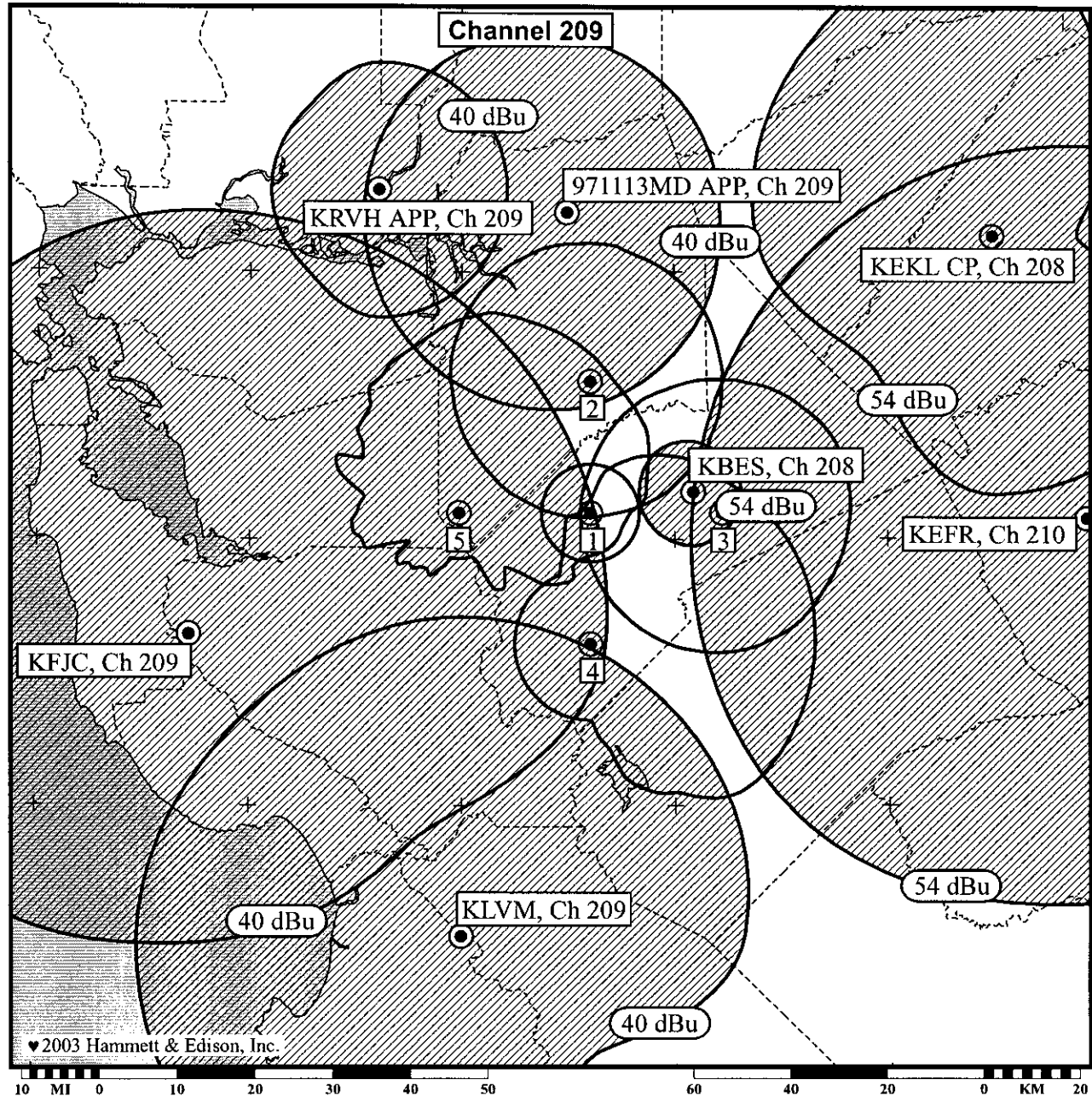


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Figure 9

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours

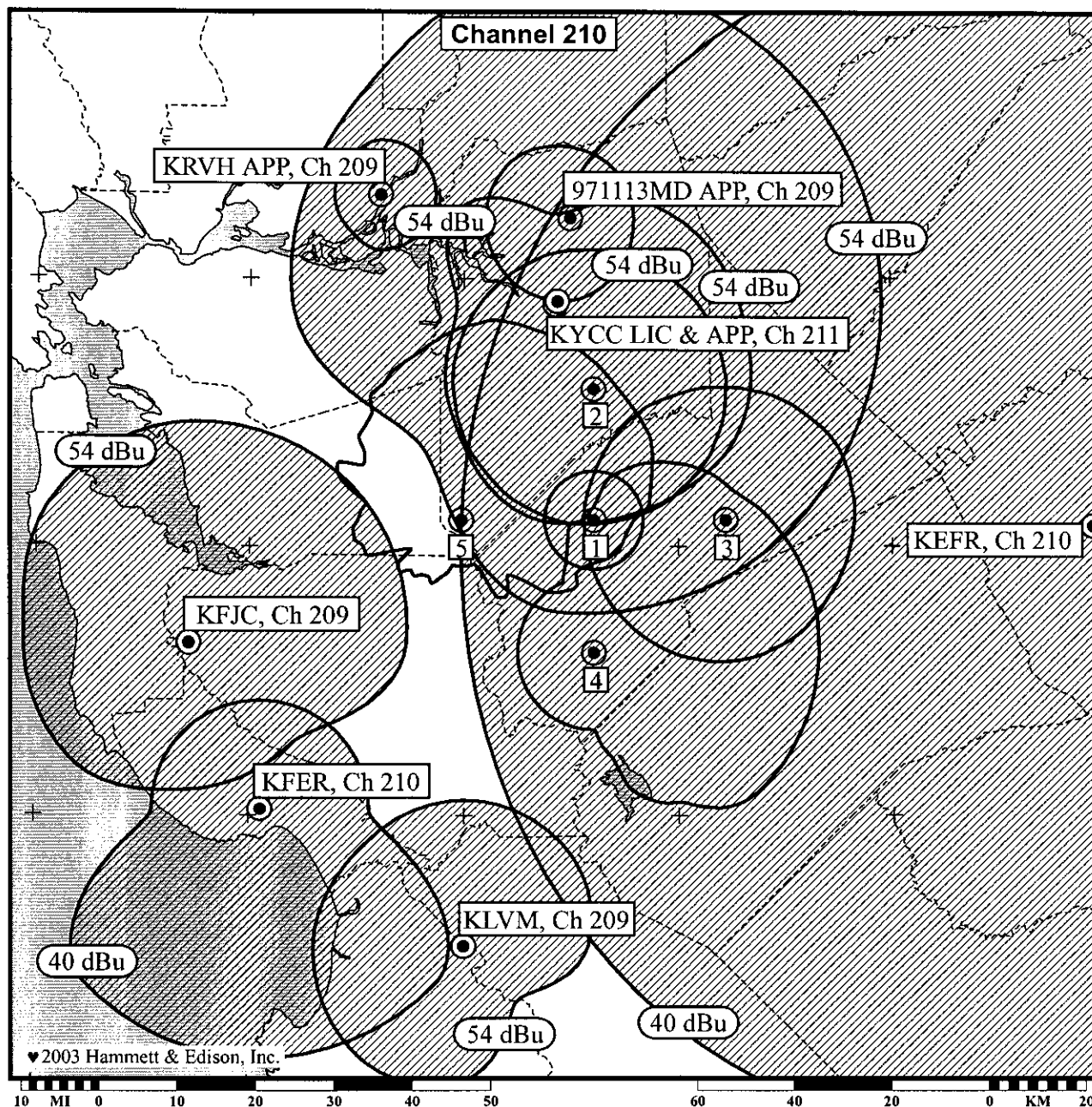


1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west



Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

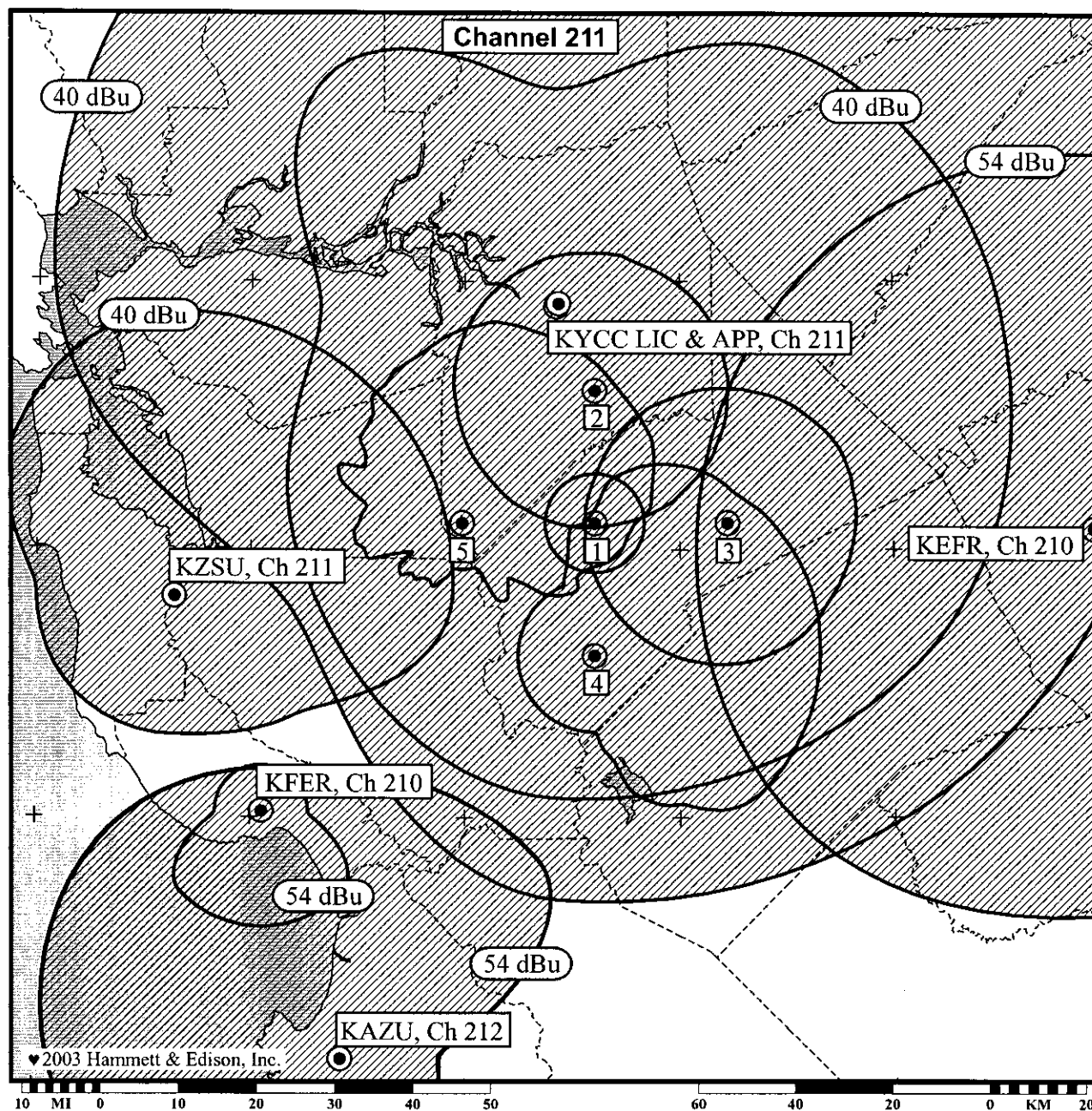


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Figure 11

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
2. Class Maximum Facility 27.3 km north
3. Class Maximum Facility 27.3 km east
4. Class Maximum Facility 27.3 km south
5. Class Maximum Facility 27.3 km west

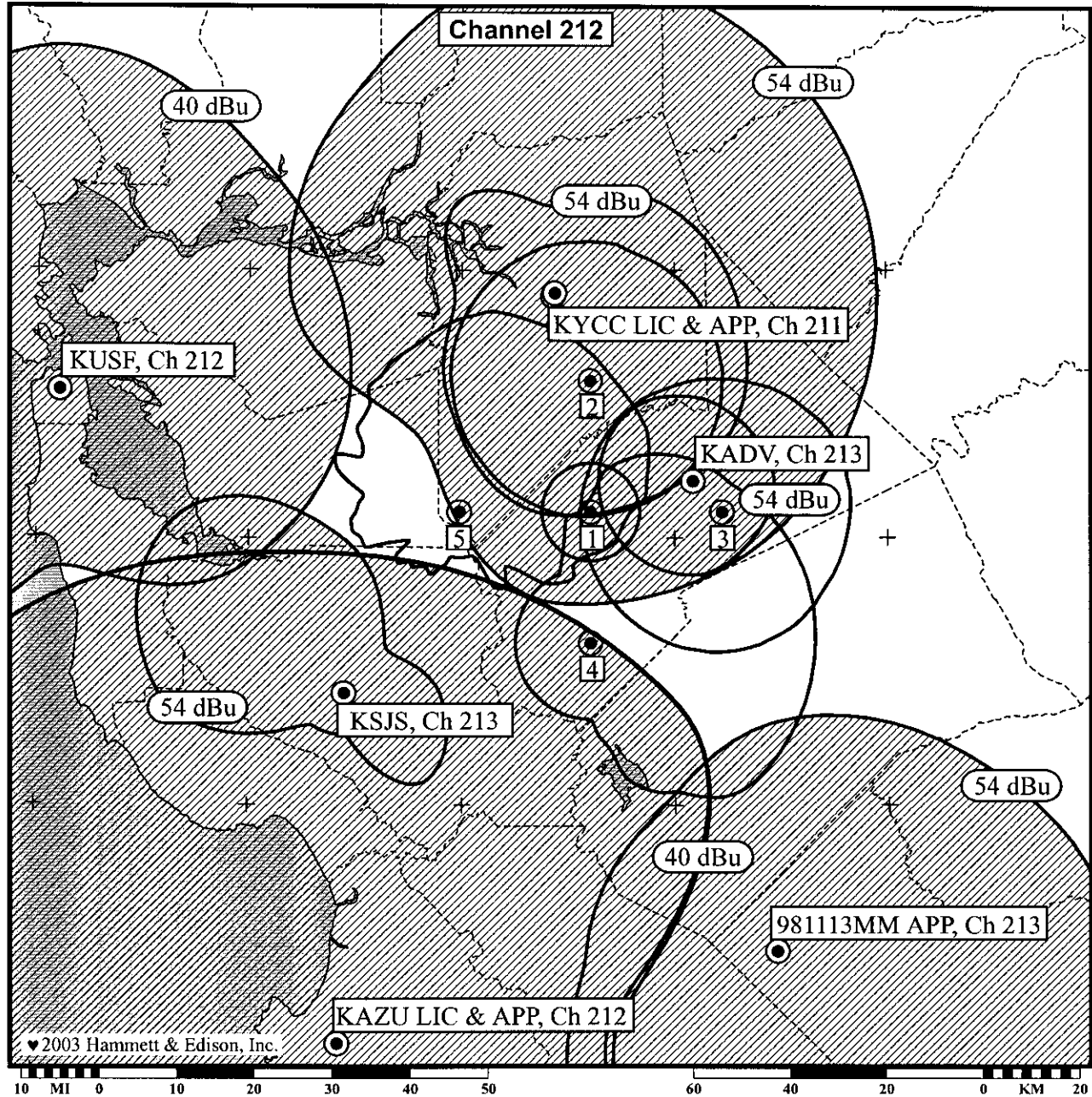


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Figure 12

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours

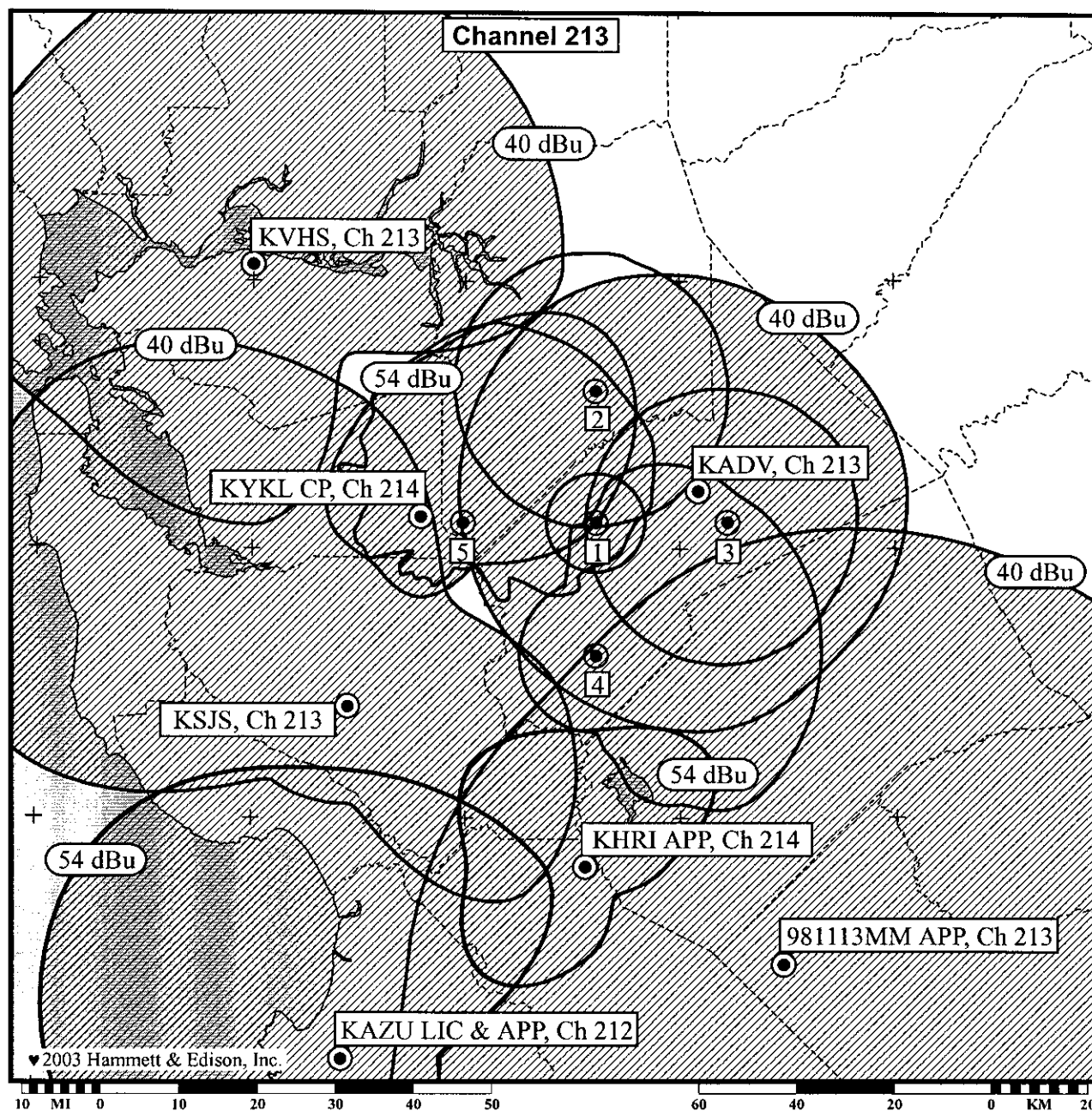


1. Class Minimum Facility at City of License Coordinates
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5. Class Maximum Facility 27.3 km west



Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
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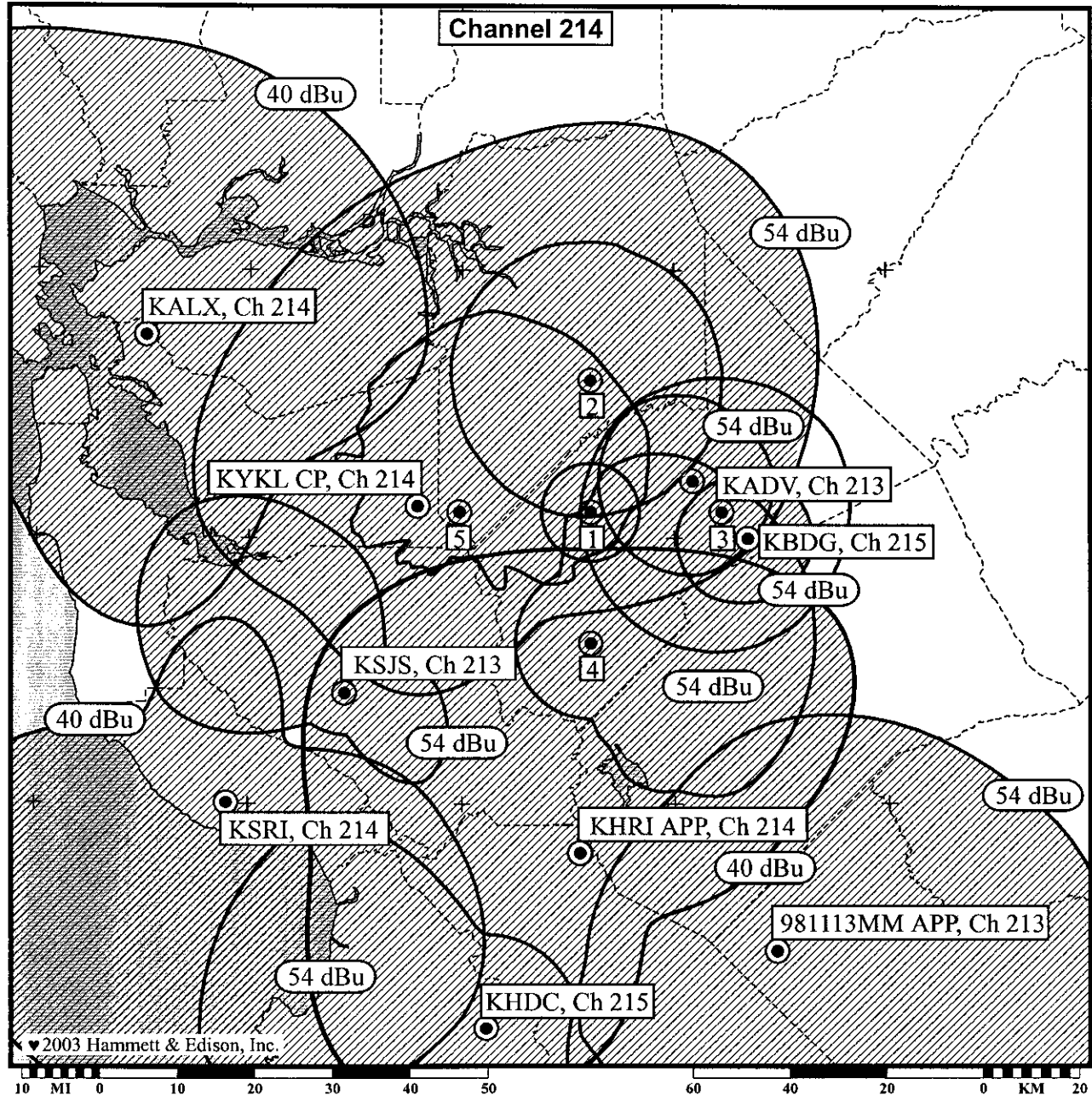


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Figure 14

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



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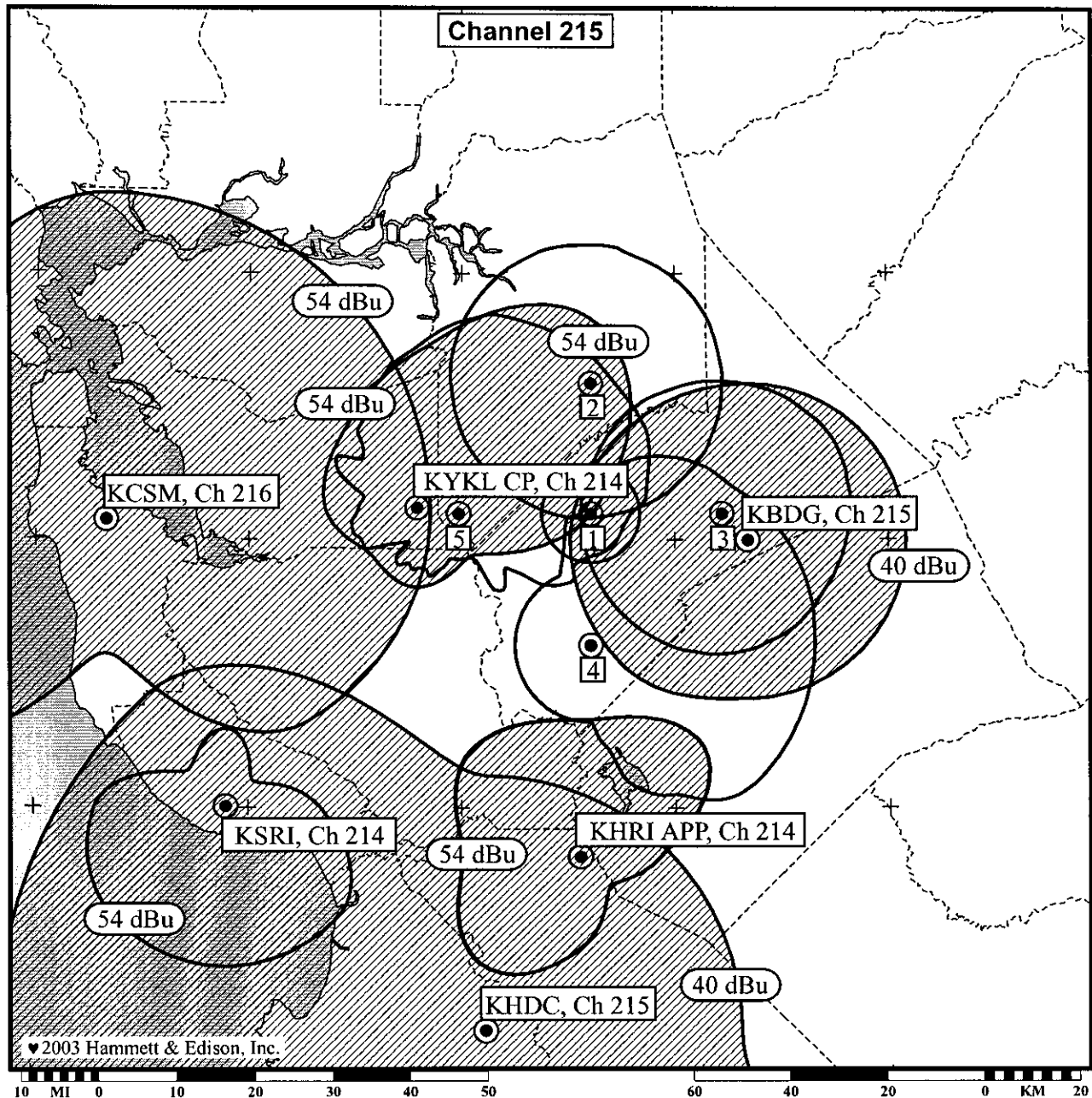


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Figure 15

Vacant FM Allotment • Channel 238A • Westley, California

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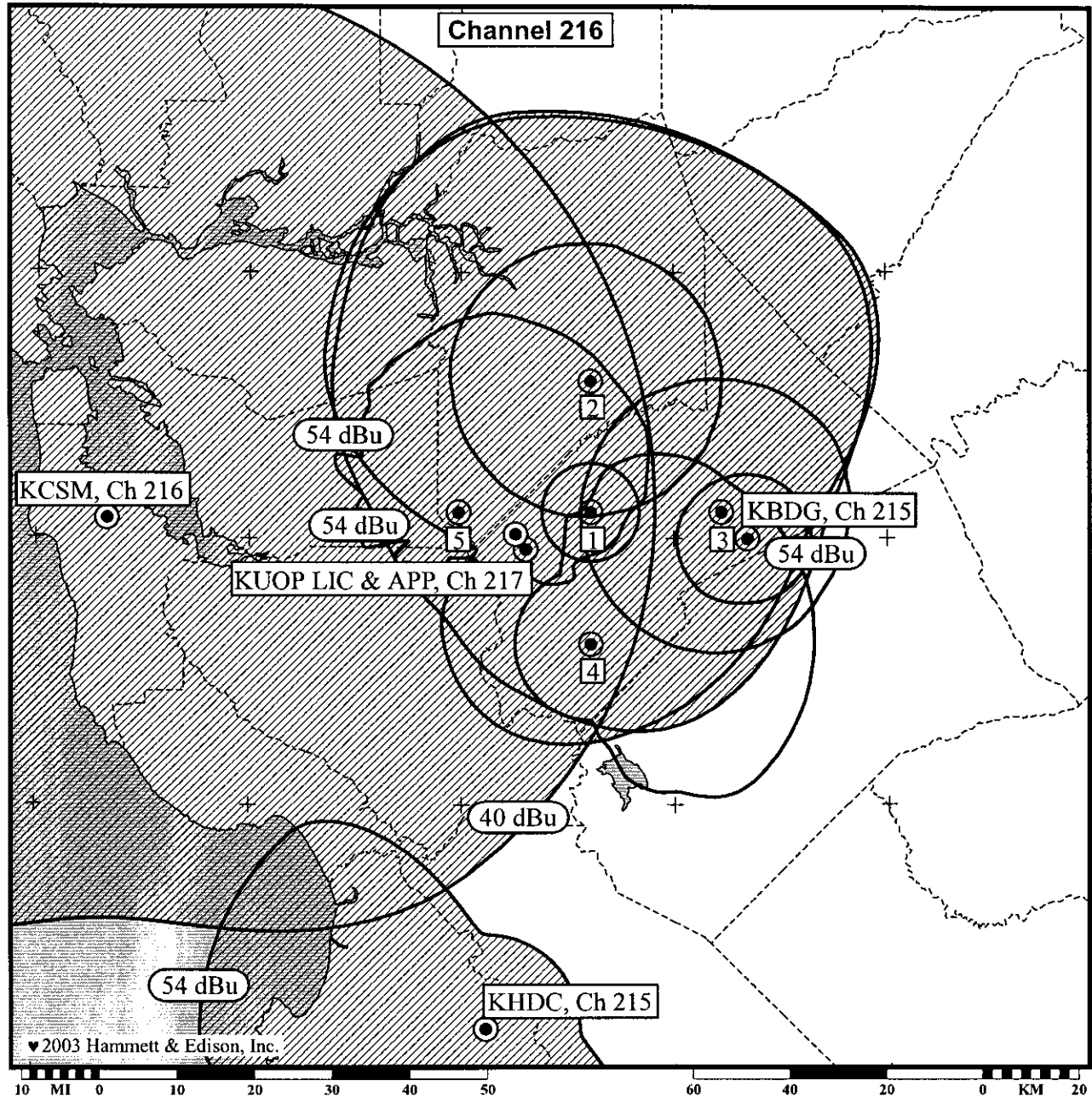


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Figure 16

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
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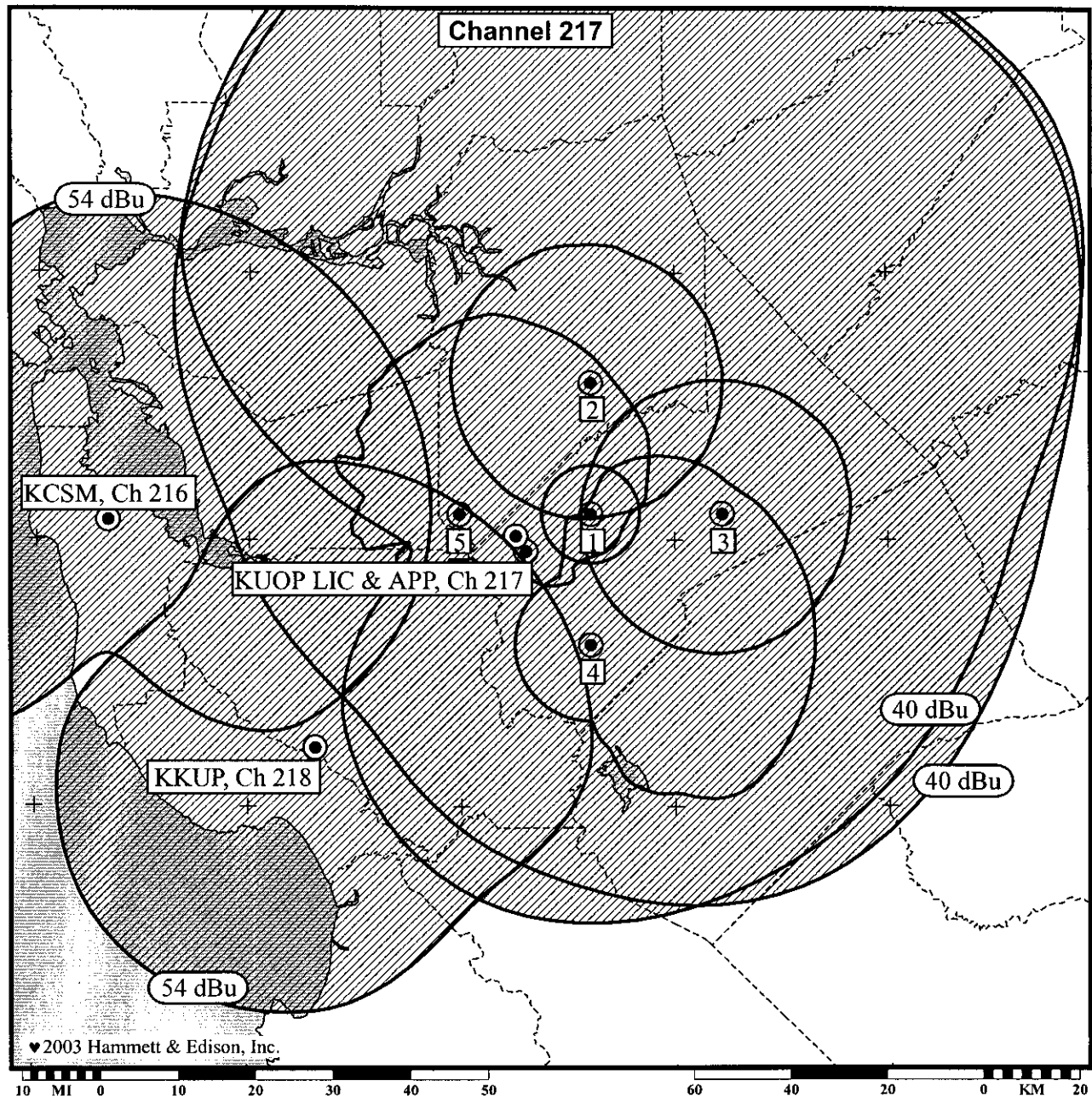


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Figure 17

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
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5. Class Maximum Facility 27.3 km west

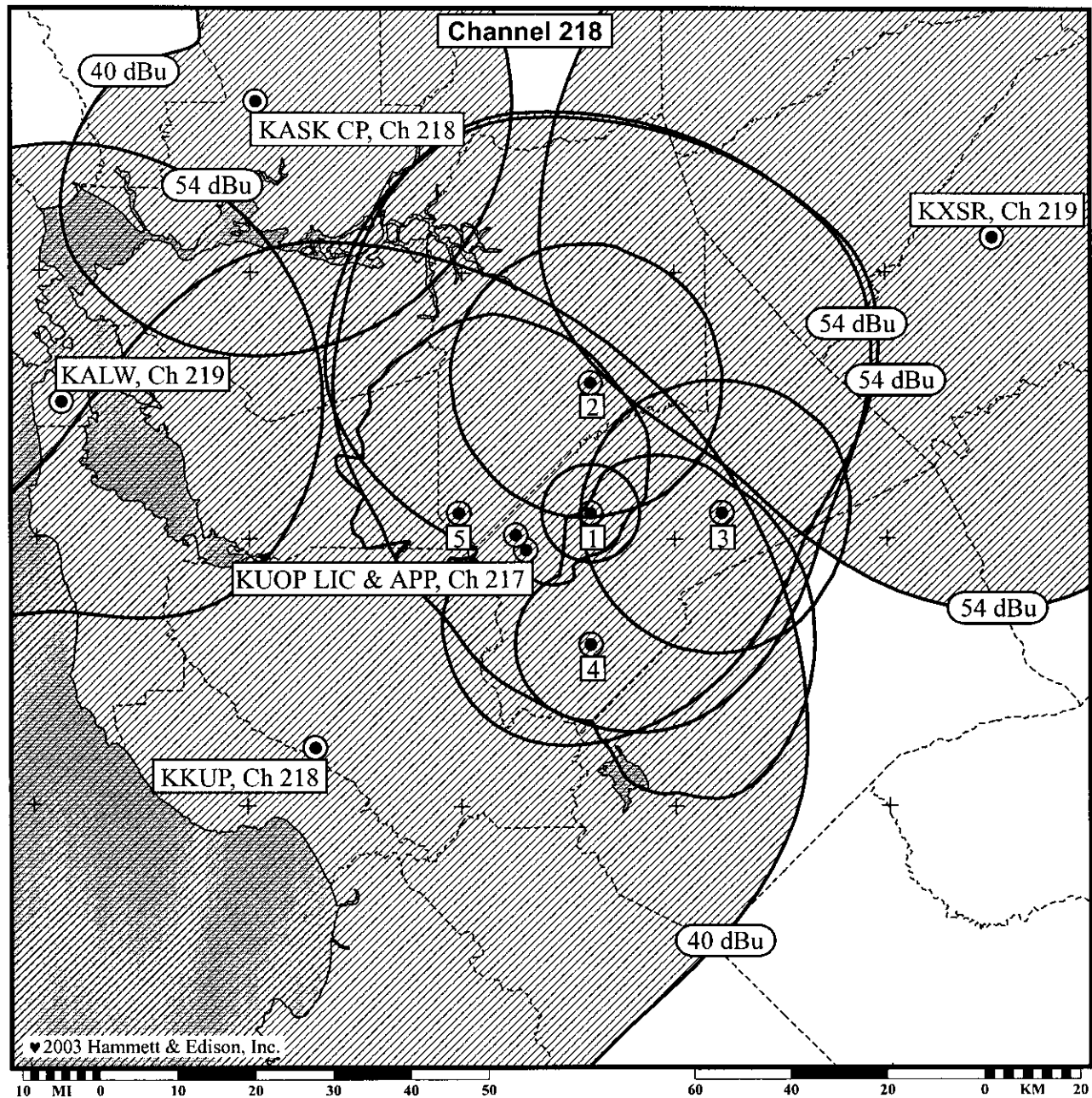


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Figure 18

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
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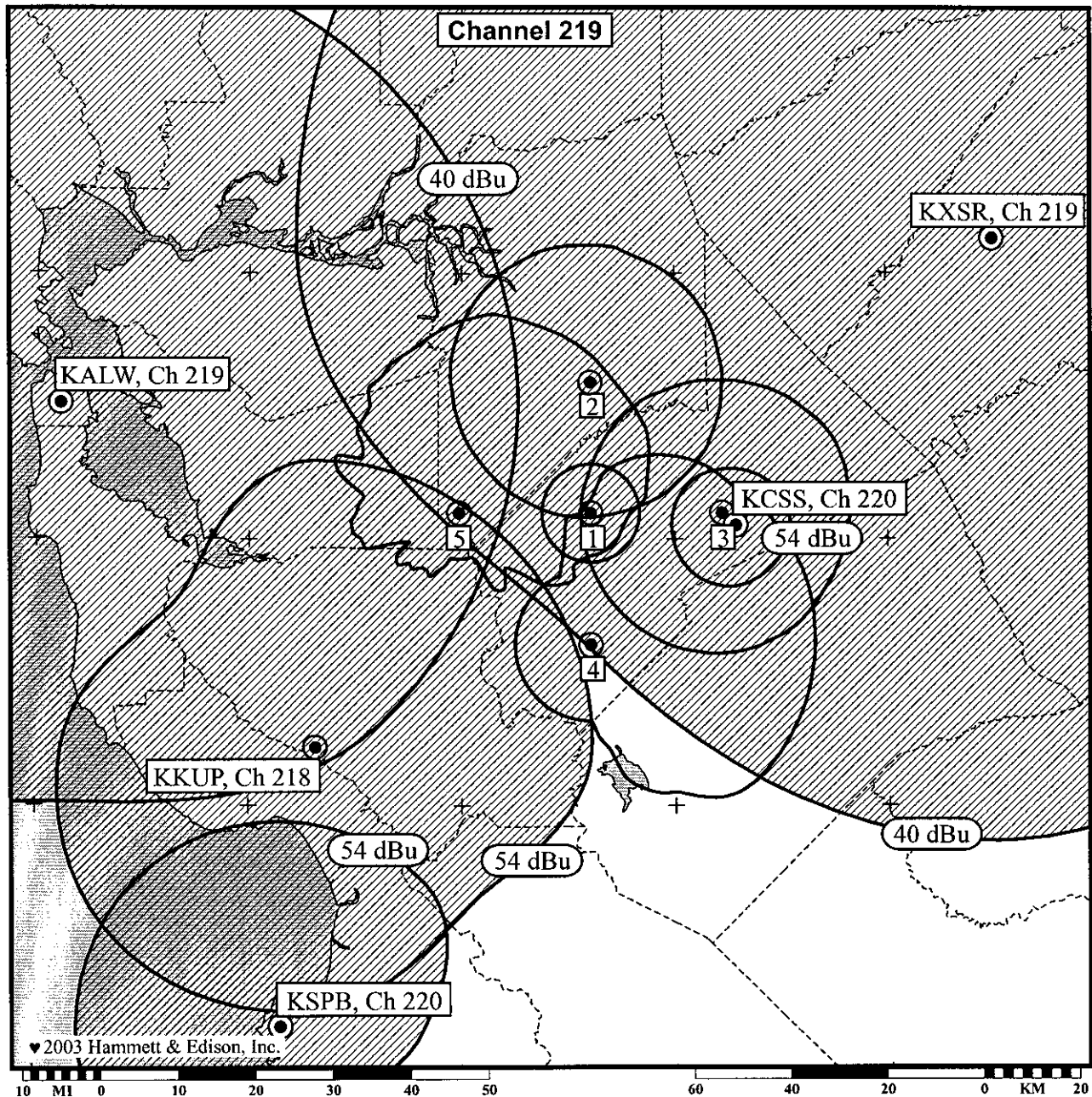


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Figure 19

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
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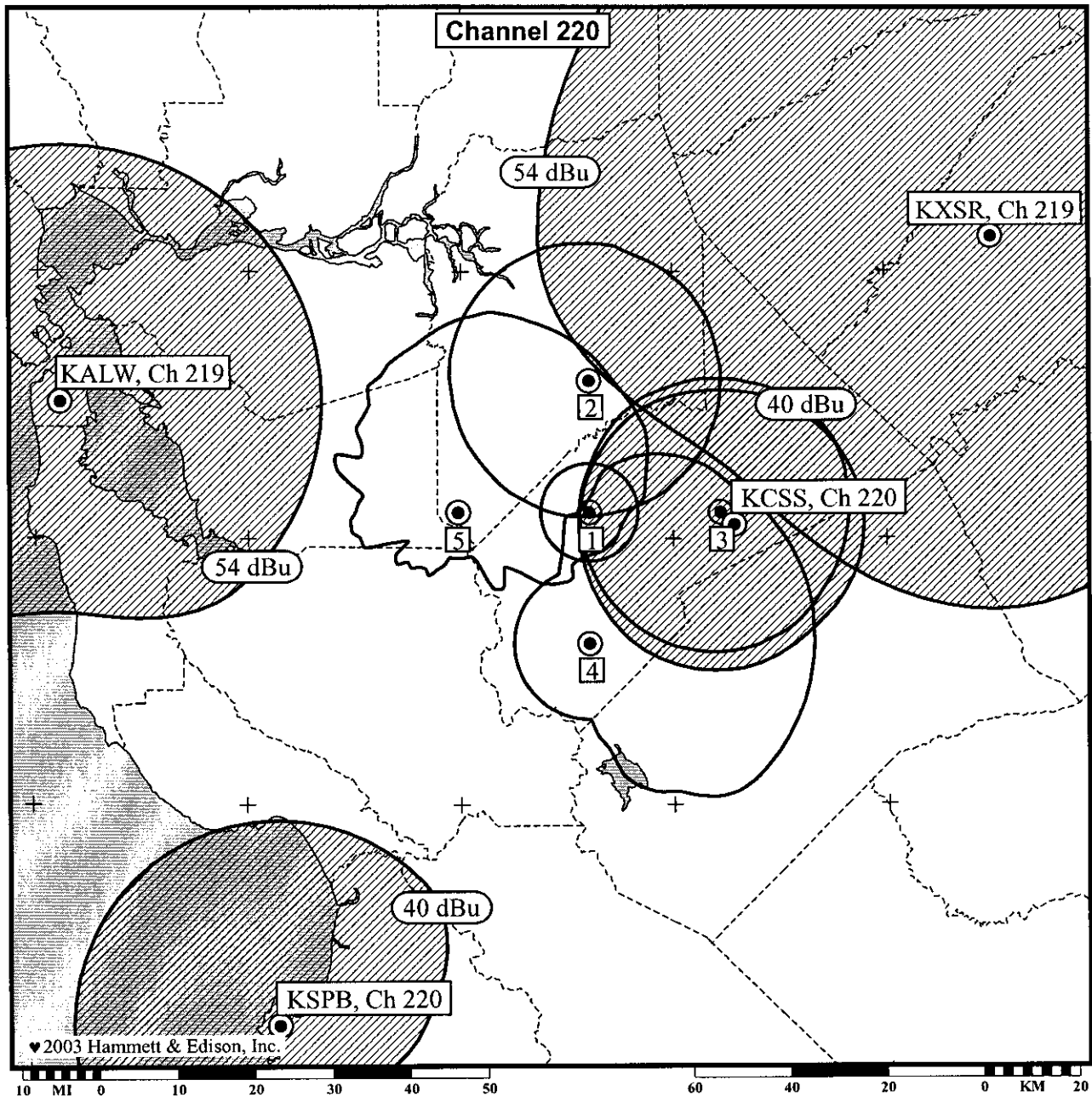


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Figure 20

Vacant FM Allotment • Channel 238A • Westley, California

Interfering F(50,10) Contours from Co- and First-Adjacent Channels
versus Protected F(50,50) 60 dBu Contours



1. Class Minimum Facility at City of License Coordinates
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5. Class Maximum Facility 27.3 km west

